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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,839	02/27/2004	David J. Neivandt	I-24197	6906

4859                      7590                      05/31/2005

MACMILLAN SOBANSKI & TODD, LLC  
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EXAMINER

ZEMEL, IRINA SOPJIA

ART UNIT                      PAPER NUMBER

1711

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO/ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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20050520

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Commissioner for Patents

See attached explanation.

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*Re*

### **PTO-90 Explanation**

The amendment filed on January 3, 2005 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because the amended claims 1-9 are drawn to a composition that constitutes the final product to the previously claimed intermediate composition.

Newly submitted claim 1-9 as amended are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

If claims 1-9 as amended were originally presented in addition to the original claims 1-27, amended claims 1-9 would have been restricted as drawn to a mutually exclusive species of a final composition in respect to the intermediate composition of original claims 1-27. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as an adhesive composition and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds

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one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-9 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

**Applicants should further note that the supplemental response filed on March 2, 2005 fails to comply with the provisions of 37 CFR 111.1 (a)(2) governing entry of supplemental replies, which are no longer entered as a matter of right. Therefore, the amendment filed on March 2, 2005 has NOT been entered.**

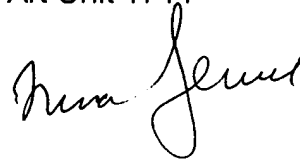
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Irina S. Zemel  
Examiner  
Art Unit 1711



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